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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,873	08/23/2001	Thomas Lemmons	043978-010000	9453
22204 7590 09/20/2007 NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128			EXAMINER CHOWDHURY, SUMAIYA A	
			ART UNIT 2623	PAPER NUMBER
			MAIL DATE 09/20/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/935,873		LEMMONS, THOMAS	
	<b>Examiner</b>		<b>Art Unit</b>	
	Sumaiya A. Chowdhury		2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/8/07 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-2, 4-6, and 8 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 1-2, 4-6, and 8, are rejected under 35 U.S.C. 103(a) as being unpatentable over Rao in view of Link (6289514).

As for claim 1, Rao discloses a method of managing television network bandwidth comprising:

broadcasting a plurality of programs on a plurality of channels to a plurality of receivers across said network; - col. 4, line 64 – col. 5, line 3, col. 14, lines 8-14

identifying each channel of said plurality of channels to which at least one receiver of said plurality of receivers connected to said network is tuned; - col. 14, lines 18-27, col. 15, lines 33-38

determining if at least one channel of said plurality of channels is not tuned by any one of said plurality of receivers; - col. 14, lines 18-27, col. 15, lines 33-38

if at least one channel of said plurality of channels is not tuned by any one of said plurality of receivers, halting transmission of a program on said at least one channel and broadcasting information other than a program on said at least one channel – col. 14, lines 21-35.

However, Rao fails to teach receiving the channel number tuned and the last channel number tuned from each receiver of the plurality of receivers.

In an analogous art, Link teaches communicating events such as channel changes to the headend. When a channel change event occurs, the current channel and the last channel tuned to along with the time the switch was made is communicated in a message to the headend – col. 9, lines 53-62, col. 10, lines 30-35, col. 6, lines 1-16

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Rao's invention to include the above mentioned limitation, as taught by Link, for the advantage of capturing consumer behavior for third party use, and also verifying actual delivery of content.

As for claims 2 and 6, Rao and Link disclose wherein said step of identifying further comprises:

receiving a signal from each receiver of said plurality of receivers, said signal indicating the channel tuned. – Rao, col. 15, lines 33-38.

As for claims 4 and 8, Rao and Link disclose wherein said step of identifying further comprises:

receiving a signal from each receiver of said plurality of receivers, said signal indicating the channel tuned if a user has selected a receiver function discontinuing reception of any channel (When the user changes the channel, the receiver informs the headend of the newly selected channel by requesting it – Rao. 13, lines 16-22).

As for claim 5, Rao discloses a method for managing network bandwidth comprising:

broadcasting a plurality of programs on a plurality of channels to a plurality of receivers across said network – col. 4, line 64 – col. 5, line 3, col. 14, lines 8-14.

defining a group of channels comprising a subset of said plurality of channels – col. 16, lines 18-23, col. 6, lines 5-14

identifying each channel of said group of channels to which at least one

receiver of said plurality of receivers connected to said network is tuned - col. 14, lines 18-27, col. 15, lines 33-38.

determining if at least one channel of said group of channels is not tuned by any one of said plurality of receivers – col. 14, lines 18-27, col. 15, lines 33-38.

halting transmission of a program on said at least one channel and broadcasting information other than a program on said at least one channel if at least one channel of said group of channels is not tuned by any one of said plurality of receivers – col. 14, lines 21-35.

However, Rao fails to teach receiving the channel number tuned and the last channel number tuned from each receiver of the plurality of receivers.

In an analogous art, Link teaches communicating events such as channel changes to the headend. When a channel change event occurs, the current channel and the last channel tuned to along with the time the switch was made is communicated in a message to the headend – col. 9, lines 53-62, col. 10, lines 30-35, col. 6, lines 1-16

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Rao's invention to include the above mentioned limitation, as taught by Link, for the advantage of capturing consumer behavior for third party use, and also verifying actual delivery of content.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sumaiya A. Chowdhury whose telephone number is (571) 272-8567. The examiner can normally be reached on Mon-Fri, 9-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SAC

  
**ANDREW Y. KOENIG**  
**PRIMARY PATENT EXAMINER**